

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 1143 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?-No.
2. To be referred to the Reporter or not?-No.

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3. Whether Their Lordships wish to see the fair copy of the judgement?-No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No.
5. Whether it is to be circulated to the Civil Judge?-No.

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PRABODHCHANDRA R PARIKH

Versus

SANGITABEN SHASHIKANT GANDHI W/O PRABODHCHANDRA PARIKH

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Appearance:

MR YATIN SONI for Petitioner  
MR MIHIR H JOSHI for Respondent No. 1  
Mr.S.T. Mehta, Addl.

PUBLIC PROSECUTOR for Respondent No. 2

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 12/02/97

ORAL JUDGEMENT

The respondent No.1-wife preferred Criminal Miscellaneous Application No.193 of 1989 against the petitioner under Section 125 of the Code of Criminal

Procedure before the learned Judicial Magistrate, First Class, Rajpipla. Pending the said application, the petitioner and respondent No.1 agreed to divorce each other and executed a Deed of Agreement to that effect. The Deed was executed on a stamp paper of Rs.50/-. Under the terms of the said Agreement, the petitioner and the respondent No.1 agreed to take divorce. It was agreed that respondent No.1 shall retain the custody of the minor children. The petitioner shall pay Rs.200/- every month for the maintenance of the minor son, then aged 3, and the respondent No.1 agreed to maintain the minor daughter, then aged 7. In view of the said Agreement, a decree for divorce was passed by the learned Extra Assistant Judge, Bharuch on 26th April, 1991. The Criminal Miscellaneous Application for maintenance filed by the respondent No.1 was also disposed of in terms of the said Agreement, i.e. a direction was issued by the learned Judicial Magistrate, First Class, on 13th February, 1990, ordering the petitioner to pay Rs.200/- every month for the maintenance of the minor son.

The respondent No.1 thereafter preferred Criminal Miscellaneous Application No.80 of 1991. She contended that in view of her financial responsibilities, she was not able to maintain the minor children and she claimed maintenance for the minor daughter from the petitioner. Said claim was allowed by the learned Judicial Magistrate, First Class, Rajpipla, on 7th August, 1992. The learned Magistrate ordered the petitioner to pay a sum of Rs.200/- every month for the maintenance of the minor daughter. Feeling aggrieved, the petitioner preferred Criminal Revision Application No.104 of 1992 before the learned Additional Sessions Judge, Bharuch, which was dismissed on 23rd June, 1994. Feeling aggrieved, the petitioner has preferred this petition under Article 227 of the Constitution.

Learned Advocate Mr.Soni, appearing for the petitioner, has contended that both the courts below have erred in holding that under Section 125 of the Code, it is the father alone, who is responsible to maintain the minor children. He has submitted that in view of Section 2(y) of the Code and Section 8 of the Indian Penal Code and Section 13(1) of the Bombay General Clauses Act, the word 'his', used in Section 125(1)(b), includes the word 'her'. He has, therefore, submitted that it is not the father alone, who is responsible to maintain his minor child, but even the mother is responsible to maintain the minor child. In support of his contention, he has relied upon the judgment of the Honourable Supreme Court in the matter of Dr. Mrs. Vijaya Manohar Arbat v. Kashirao

Rajaram Sawai and another (AIR 1987 SC 1100). In the said judgment, relying on the very provisions of the Crl.P.C., Indian Penal Code and the Bombay General clauses Act, the Court has held that the word 'his', occurring in Section 125(1)(d), denotes also a 'female'. The Court, therefore, proceeded further to hold that not the son alone, but a daughter is also responsible to maintain her parent, who was unable to maintain himself. Mr.Soni has also relied upon the judgment of this Court in the matter of Minor Binaben Arvindkumar Tripathi and two others v. Ranjanben, W/o Arvindkumar Kamlashankar Tripathi and another {1991(1)GLH 27}. In the above judgment, this Court has upheld the claim for maintenance against the mother made on behalf of a minor child. In view of the above judgments, the contention raised by Mr.Soni requires to be upheld. A claim for maintenance on behalf of a minor child can also be made against the mother having sufficient means. Mr.Soni has further contended that the respondent No.1 herself is a school teacher and has sufficient income of her own. She, therefore, has sufficient means to maintain the minor daughter and petitioner should not have been directed to pay maintenance to the minor daughter.

Mr.Soni has further contended that earlier, the petitioner and the respondent No.1 has entered into an Agreement and under the said Agreement, the petitioner had agreed to pay a sum of Rs.200/- for the maintenance of the minor son and the respondent No.1 had agreed to maintain the minor daughter. The said Agreement is binding to both the petitioner and the respondent No.1 and, therefore, also the petitioner cannot be compelled to pay maintenance for the minor daughter. He has, therefore, relied upon the judgment of this Court in the matter of Laduba, D/o Narsang Vakhatsang Vaghra v. Balvantsing Bhimsing Rana and another {1991(1) GLR 131}. In that matter, the court was considering a wife's claim for maintenance lodged after 30 years of estrangement. The Court upheld the claim and held that :-

"... Though the petitioner wife has filed a petition for maintenance under Section 125 of the Criminal Procedure Code after 30 years, that does not snatch away her right of demanding maintenance unless she voluntarily gives up that right...."

In the facts of the present case, the said judgment has no applicability.

I do not accept this contention raised by

Mr.Soni. The Agreement referred to by Mr.Soni is virtually a consent to divorce and it cannot be said that the minor daughter or the mother, as her guardian, had given up her right to maintenance from her father.

In the present case, the respondent No.1 filed an application, claiming that in view of her financial responsibilities, she was unable to maintain her minor daughter. Both the Courts below, considering her income and that she had to spend substantial amount for repairs to her house, have held that she was unable to maintain the minor daughter. Further, merely because the mother has sufficient means to maintain a minor child, the father is not absolved from his liability to maintain the minor child. In that view of the matter also, the petitioner is liable to maintain the minor daughter. The petitioner is also a school teacher, earning around Rs.2,200/- every month, and he has no other financial responsibility. Considering the said income, the Courts below have awarded a monthly maintenance of Rs.200/- to the minor daughter. The said amount can neither be said to be excessive nor disproportionately high. In the circumstances, the order of maintenance made in favour of the minor daughter against the present petitioner does not call for interference. Petition is, therefore, dismissed. Rule is discharged.

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(apj)